

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

HENRY A. UMOUYO,

Plaintiff,

v.

BANK OF AMERICA, N.A.;  
CARRINGTON MORTGAGE SERVICES,  
LLC; AND ANY UNKNOWN HEIRS,  
DEVISEES, GRANTEEES, CREDITORS,  
AND OTHER UNKNOWN PERSONS OR  
UNKNOWN SPOUSES CLAIMING BY,  
THROUGH AND UNDER BANK OF  
AMERICA, N.A.,

Defendant.

Case No. 2:16-CV-01576-RAJ

ORDER

**I. INTRODUCTION**

This matter comes before the Court on Plaintiff's Motion to Remand (Dkt. # 10) and Plaintiff's Motion for Preliminary Injunction (Dkt. # 12). For the reasons stated below, the Court **DENIES** both motions.

**II. BACKGROUND<sup>1</sup>**

<sup>1</sup> As noted below, the Court, in accordance with Fed. R. Evid. 201, takes judicial notice of certain documents. *Infra* § III.A.

1 On January 10, 2008, Plaintiff Henry A. Umouyo (“Plaintiff”) took out a mortgage  
2 loan for \$329,824.00 from CTX Mortgage Company, LLC. Dkt. # 1-1 at ¶ 11, Ex. 3.  
3 Plaintiff’s loan is secured by a Deed of Trust (“DOT”) on real property, located at 11708  
4 SE 238<sup>th</sup> Street, Unit 12, Kent, Washington (“Property”). *Id.* at ¶ 12, Ex. 4. The DOT  
5 was recorded on June 2, 2010 in King County, and was assigned to BAC Home Loans,  
6 Servicing LP, fka Countrywide Home Loans Servicing, LP (“BAC”). King County  
7 Auditor Instrument # 20100602000169. On the same day, an Appointment of Successor  
8 Trustee was assigned to Reconstrust Company, N.A. (“Reconstrust”). King County  
9 Auditor Instrument # 20100602000170. Then, on October 24, 2011, the DOT was  
10 assigned to Bank of America, N.A. (“BANA”). King County Auditor Instrument #  
11 20111024001172.

12 In August 2009, Plaintiff stopped paying his mortgage loan. Dkt. # 1-1 at ¶ 36,  
13 Ex. 2. On October 6, 2009, BAC, the servicer at the time, issued a Notice of Intent to  
14 Accelerate. Dkt. # 1-2. The Notice of Intent to Accelerate (“the Notice”) warned  
15 Plaintiff that “if the default is not cured on or before November 5, 2009, the mortgage  
16 payments **will be accelerated** with the full amount remaining accelerated and becoming  
17 due and payable in full.” *Id.* In July 2010, a Notice of Trustee’s Sale was recorded in  
18 King County, which set a trustee’s sale of the Property for October 29, 2010. *Id.* at Ex. 8;  
19 King County Auditor Instrument # 20100729000513. However, on September 23, 2011,  
20 Reconstrust discontinued the sale. Dkt. # 1-1 at ¶ 29; King County Auditor Instrument #  
21 20110923000439.

22 On September 9, 2016, Plaintiff filed this action in King County Superior Court,  
23 seeking to quiet title to the Property. Dkt. # 1-1. Plaintiff is a citizen of Washington  
24 State. Dkt. # 1-1. Defendant BANA is a citizen of North Carolina, where its main office  
25 is located. Dkt. # 1 at 3. Defendant Carrington Mortgage Services, LLC (“Carrington”)  
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1 is a citizen of Delaware, California, and Connecticut.<sup>2</sup> *Id.* No members of Carrington or  
2 its subsidiary members are citizens of Washington. *Id.* Additionally, the amount in  
3 controversy exceeds \$75,000.00. Dkt. # 1-1, Ex. 3; Dkt. # 1 at 3. Noting that the  
4 requirements of 28 U.S.C. § 1332 were met, Defendants timely removed the action. Dkt.  
5 # 1. On October 20, 2016, Plaintiff filed a Motion to Remand. Dkt. # 10. Plaintiff  
6 subsequently filed a Motion for Preliminary Injunction. Dkt. # 12.

### 7 **III. DISCUSSION**

#### 8 **A. Judicial Notice<sup>3</sup>**

9 Defendant requests that the Court take judicial notice of certain documents.  
10 Among these documents are: (1) an assignment of deed of trust, King County Auditor  
11 Instrument # 20100602000169; (2) an appointment of successor trustee, King County  
12 Auditor Instrument # 20100602000170; (3) an assignment of deed of trust, King County  
13 Auditor Instrument # 20111024001172; (4) a notice of trustee's sale, King County  
14 Auditor Instrument # 20100729000513; (5) a notice of discontinuance of trustee's sale,  
15 King County Auditor Instrument # 20110923000439; and (6) BANA's judicial  
16 foreclosure action against Plaintiff, *Bank of America, N.A. v. Umouyo, et al.*, No. 14-2-  
17 18637-1. Each of these documents is available at  
18 <http://www.kingcounty.gov/depts/auditor.aspx> or <http://www.courts.wa.gov/>.

19 Under Rule 201, a court may take judicial notice of "a fact that is not subject to  
20 reasonable dispute because it: (1) is generally known within the trial court's territorial

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22 <sup>2</sup> Although BANA is named as a defendant on Defendant's Notice of Removal,  
23 Defendant Carrington asserts that BANA has not been properly served. Dkt. # 1 at 3.

24 <sup>3</sup> In its opposition to Plaintiff's Motion for Preliminary Injunction, Defendant requests  
25 judicial notice of documents. Dkt. # 13 at 2-3. However, no such request for judicial notice  
26 appears on the docket. Defendant's Notice of Removal attaches Plaintiff's Complaint, which  
27 includes some of the Defendant's referenced documents, but not all. Dkt. # 1-1. Parties must  
28 properly file "the necessary information" under Rule 201. Fed. R. Evid. 201. Nonetheless, the  
Court has located the documents of which Defendant seeks judicial notice at  
<http://www.kingcounty.gov/depts/auditor.aspx> or <http://www.courts.wa.gov/>. The parties are  
warned that the Court will not continue to overlook noncompliance with Rule 201. Fed. R. Evid.  
201.

jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201. Certain public records qualify under the second category, including the “records and reports of administrative bodies.” *United States v. Ritchie*, 342 F.3d 903, 909 (9th Cir. 2003) (quoting *Interstate Nat. Gas Co. v. S. Cal. Gas Co.*, 209 F.2d 380, 385 (9th Cir. 1953)).

Here, the contents of these documents are not subject to reasonable dispute, as they “are authentic documents recorded with a governmental agency.” *Gelinas v. U.S. Bank, NA*, No. 16-1468-JLR, 2017 WL 553277, at \*3 (W.D. Wash. Feb. 10, 2017). Therefore, the Court takes judicial notice of the foregoing publically recorded King County documents.

#### **B. Plaintiff’s Motion to Remand**

“Federal courts are courts of limited jurisdiction.” *Heacock v. Rolling Frito-Lay Sales, LP*, No. C16-0829-JCC, 2016 WL 4009849, at \*1 (W.D. Wash. July 27, 2016); *see* 28 U.S.C. §§ 1331–1332. District courts have “original jurisdiction” over causes of action “where the matter in controversy exceeds the sum or value of \$75,000” and where there is complete diversity between the parties. 28 U.S.C. § 1332(a)(1). Complete diversity exists when the parties are domiciled in separate states. *See Kanter v. Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001). An individual is a citizen of the state in which he is domiciled, not his state of residence. *Id.* A “corporation is a citizen of any state where it is incorporated and of the state where it has its principal place of business.” *Heacock*, 2016 WL 4009849, at \*1 (quoting *Indus. Tectonics, Inc. v. Aero Alloy*, 912 F.2d 1090, 1092 (9th Cir. 1990)). Additionally, “an LLC is a citizen of every state of which its owners/members are citizens.” *Johnson v. Columbia Properties Anchorage, LP*, 437 F.3d 894, 899 (9th Cir. 2006)

Under 28 U.S.C. § 1441, a defendant may remove a case from state court to federal court if the case becomes removable on the basis of diversity. *See* 28 U.S.C. § 1441. Removal statutes are construed restrictively, and the removing defendant bears the

1 burden of establishing that removal is proper. *Gaus v. Miles, Inc.*, 980 F.2d 564, 566-67  
2 (9th Cir. 1992). Any doubts as to the right of removal are resolved in favor of remanding  
3 the case to state court. *Id.*; *see also Zazueta v. Nationstar Mortgage LLC*, No. 3:16-CV-  
4 05893-RJB, 2017 WL 74682, at \*1 (W.D. Wash. Jan. 9, 2017).

5 Plaintiff argues that that removal is improper because Carrington did not obtain  
6 consent to remove from co-defendant BANA. Dkt. # 10. Carrington responds that  
7 removal is proper because (1) Plaintiff did not properly serve BANA via U.S. mail, and  
8 (2) even if service was proper, BANA consented to removal. Dkt. # 11.

9 The Ninth Circuit has held that the “filing of a notice of removal can be effective  
10 without individual consent documents on behalf of each defendant.” *Proctor v. Vishay*  
11 *Intertechnology Inc.*, 584 F.3d 1208, 1225 (9th Cir. 2009). Further, a defendant’s  
12 removal notice “containing an averment of the other defendants’ consent and signed by  
13 an attorney of record is sufficient.” *Id.* at 1225; *see also Bennett v. Chicago Title Ins.*  
14 *Co.*, No. C13-1354RSL, 2013 WL 6795167, at \*1 (W.D. Wash. Dec. 17, 2013); *Bavand*  
15 *v. OneWest Bank FSB*, No. C12-0254JLR, 2012 WL 1884668, at \*5 (W.D. Wash. May  
16 22, 2012). Here, Carrington indicated in its Notice of Removal that BANA is “also  
17 represented by the undersigned counsel” and that BANA consents to removal. Dkt. # 1 at  
18 3. Additionally, the attorney of record for Carrington signed the Notice of Removal. *Id.*  
19 Therefore, the Court finds that Defendant properly removed under 28 U.S.C. §§ 1332 and  
20 1441.

21 Accordingly, the Court **DENIES** Plaintiff’s Motion to Remand. Dkt. # 10.

### 22 **C. Plaintiff’s Motion for a Preliminary Injunction**

23 In his Motion for Preliminary Injunction, Plaintiff requests that the Court restrain  
24 Defendant from “conducting any foreclosure activity, change of servicer, [and] change of  
25 mortgage ownership.” Dkt. # 12 at 3. Plaintiff’s quiet title claim relies on the premise  
26 that the statute of limitations has run on Defendant’s ability to foreclose. Dkt. # 12.  
27 Defendant argues that Plaintiff is not entitled to a preliminary injunction because Plaintiff

1 has not established he is likely to succeed on the merits of his claim, or that he is likely to  
2 suffer irreparable harm.<sup>4</sup> Dkt. # 13.

3 In order to obtain preliminary relief, a party “must establish that [it] is likely to  
4 succeed on the merits, that [it] is likely to suffer irreparable harm in the absence of  
5 preliminary relief, that the balance of equities tips in [its] favor, and that an injunction is  
6 in the public interest.” *Am. Trucking Ass’n, Inc. v. City of Los Angeles*, 559 F.3d 1046,  
7 1052 (9th Cir. 2009) (quoting *Winter v. Natural Resources Defense Council, Inc.*, 555  
8 U.S. 7, 20 (2008)). “In addition, a ‘preliminary injunction is appropriate when a plaintiff  
9 demonstrates that serious questions going to the merits were raised and the balance of  
10 hardships tips sharply in the plaintiff’s favor,’ provided the plaintiff also demonstrates  
11 that irreparable harm is likely and that the injunction is in the public interest.” *Andrews*  
12 *v. Countrywide Bank, NA*, 95 F. Supp. 3d 1298, 1300 (W.D. Wash. 2015) (quoting  
13 *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134-35 (9th Cir. 2011)).

14 Plaintiff’s claim to quiet title arises under RCW 7.28.300. This provision allows  
15 record owners of real estate to “maintain an action to quiet title against the lien of a  
16 mortgage or deed of trust on the real estate where an action to foreclose such mortgage or  
17 deed of trust would be barred by the statute of limitations.” RCW 7.28.300. The statute  
18 of limitations on a deed of trust and a promissory note is six years. RCW 4.16.040(1);  
19 *Fujita v. Quality Loan Serv. Corp. of Washington*, No. C16-925-TSZ, 2016 WL 4430464,  
20 at \*2 (W.D. Wash. Aug. 22, 2016).

#### 21 1. Acceleration

22 Ordinarily, a promissory note “which provides for the repayment of a debt by  
23 installments creates an individual cause of action for each installment with its own  
24 limitations period.” *Fujita*, 2016 WL 4430464, at \*2. However, if the debt is accelerated

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27 <sup>4</sup> Defendant also claims there is no pending foreclosure on Plaintiff’s property. Dkt. # 13  
28 at 2.

1 and the entire debt becomes due, the statute of limitations begins to run from the date the  
2 amount is due, subject to any tolling. *Id.* at \*2.

3 Plaintiff argues that Defendant accelerated his debt in November 2009 when  
4 Defendant sent the Notice. Dkt. # 12 at 6. The Notice stated that Plaintiff must cure the  
5 default on or before November 5, 2009, or the debt will automatically be accelerated.  
6 Dkt. # 12 at 6. Defendant contends that it did not accelerate Plaintiff's debt in November  
7 2009, "but merely provided notice of an intent to accelerate in the future." Dkt. # 13 at 5.

8 In order to trigger acceleration, a creditor must clearly indicate, by "some  
9 affirmative action," that the option to accelerate has been exercised. *Weinberg v. Naher*,  
10 51 Wash. 591, 594 (1909); *see also Edmundson v. Bank of America*, 194 Wash. App.  
11 920, 930 (2016). Here, Defendant accelerated the debt on November 5, 2009. Defendant  
12 was not required to send Plaintiff any additional notification in order to trigger the  
13 acceleration because the mandatory language in the Notice was clear: if Plaintiff did not  
14 cure his debt by November 5, 2009, then "the mortgage payments **will be accelerated.**"  
15 Dkt. # 1-2; *see Fujita*, 2016 WL 4430464, at \*2 (finding that the Notice of Intent to  
16 Accelerate did constitute acceleration, in part, because the Notice spoke in mandatory  
17 terms: "If the default is not cured on or before July 16, 2009, the mortgage payments *will*  
18 *be accelerated . . .*"); *4518 S. 256th, LLC v. Karen L. Gibbon, P.S.*, 195 Wash. App. 423,  
19 437 (2016) (stating that acceleration of the debt had not occurred, to some extent because  
20 the notice of trustee's sale did not contain any language that acceleration would be  
21 automatic); *but see Bank of N.Y. Mellon v. Stafne*, No. C16-77 TSZ, 2016 WL 7118359,  
22 at \*2 (W.D. Wash. Dec. 7, 2016).

## 23 2. Tolling

24 The statute of limitations is tolled during the pendency of a Notice of Trustee Sale,  
25 but it begins to run again if the sale is discontinued. *Fujita*, 2016 WL 4430464, at \*2.  
26 Here, the entire debt became due on November 5, 2009. Dkt. # 1-2. The Notice of  
27 Trustee Sale was issued on July 29, 2010, setting the sale for October 29, 2010 (King

1 County Auditor Instrument # 20100729000513), and the sale was discontinued on  
2 September 23, 2011 (King County Auditor Instrument # 20110923000439). However, a  
3  
4 trustee may continue the sale, for any cause, for a period not to exceed 120 days. RCW  
5 61.24.040(6). Therefore, the statute of limitations in this case was tolled for 120 days—  
6 the cap pursuant to RCW 61.24.040(6).

7 Additionally, the statute of limitations is tolled during the pendency of a judicial  
8 foreclosure as long as the summons is served within 90 days of the filing of the  
9 complaint. RCW 4.16.170; *see also Dumarce v. Christensen*, No. CV-05-419-FVS, 2007  
10 WL 2572315, at \*2 (E.D. Wash. Sept. 5, 2007). Defendant filed its action for judicial  
11 foreclosure on July 3, 2014 in King County. *Bank of America, N.A. v. Umouyo, et al.*,  
12 No. 14-2-18637-1; Dkt. # 1-1 at ¶¶ 32, 33. King County Superior Court dismissed the  
13 action on July 27, 2016. Dkt. # 1-1 at ¶ 33; Dkt. # 13 at 6. Because the summons was  
14 served and the complaint was filed within a 90 day period, the statute of limitations was  
15 tolled for from July 3, 2014 to July 27, 2016. *Id.* In total, the statute of limitations was  
16 tolled approximately two years and 120 days. Therefore, the statute of limitations has not  
17 run.

18 Plaintiff fails to demonstrate an entitlement to preliminary injunctive relief.  
19 Plaintiff must show at least substantial questions going to the merits of his quiet title  
20 claim. *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. at 20. Because  
21 Plaintiff's quiet title claim relies on the premise that the statute of limitations has run on  
22 Defendant's ability to foreclose—and because this is not the case—the Court denies  
23 Plaintiff's Motion for Preliminary Injunction for failure to show substantial questions  
24 going to the merits of his claim. *Id.*; *see also Choi v. Quality Loan Serv. Corp.*, No. C16-  
25 1745JLR, 2017 WL 659966, at \*2, n.5 (W.D. Wash. Feb. 14, 2017) (finding that, even if  
26 the court had subject matter jurisdiction, the Plaintiff failed to demonstrate an entitlement  
27 for preliminary injunctive relief in her quiet title action).

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#### IV. CONCLUSION

For the reasons stated above, the Court **DENIES** Plaintiff's Motion to Remand (Dkt. # 10), and the Court **DENIES** Plaintiff's Motion for Preliminary Injunction (Dkt. # 12).

DATED this 28th day of April, 2017.

A handwritten signature in black ink, reading "Richard A. Jones", written over a horizontal line.

The Honorable Richard A. Jones  
United States District Judge